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March 20, 2000

Sent via e-mail and either fax, hand delivery or U.S. Mail

Mary L. Cottrell, Secretary
Massachusetts Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

re: Bell Atlantic's Fifth Annual Price Cap Compliance Filing, D.T.E. 99-102

Dear Secretary Cottrell:

Pursuant to the procedural schedule adopted in this proceeding, the Attorney General submits this letter as his Reply Brief, together with a Certificate of Service, in response to the Initial Brief filed by Bell Atlantic-Massachusetts ("Bell Atlantic" or "the Company") on March 6, 2000. The Attorney General has reviewed the Company's Initial Brief and, except as specifically stated herein, this review has not caused any change in the positions set forth in his Initial Brief. No attempt has been made to respond to all of the arguments made and positions taken by the Company. Silence regarding any specific argument raised in the Company's Initial Brief should not be taken as agreement by the Attorney General.

1. The Proposal To Reduce The Productivity Factor Should Be Rejected.

Notwithstanding the lack of any support in the plain language of the Department's 1995 order in D.P.U. 94-50, on brief, Bell Atlantic defends its proposal to reduce the productivity offset from 4.1 percent to 2.94 percent with assertions that an adjustment to the price regulation index ("PRI") is consistent with the policy basis for a service quality penalty and that it is "fair and reasonable" (Bell Atlantic Brief at 9). The Company complains that the Attorney General's position that the Department should adhere to the actual language of its 1995 order - i.e., to make no adjustment other than to ensure that "[a]ny resulting increase in the productivity offset shall not carry over to any future annual filings" - ignores "completely any notion of fairness" and would produce "a never-ending, confiscatory penalty" (id.).

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The Company's position is without merit. There is no reason for the Department to go beyond the express language of its Price Cap Plan Order. In 1995, the Department adopted a service quality mechanism that provided for an annual review of the quality of the Company's service and penalized any deterioration in the quality of service through one-year increases in the productivity offset. Consistent with the provision for an annual review of the quality of the service provided by the Company, the Department stated plainly that the increases in the productivity offset were not be carried over beyond the year in question. D.P.U. 94-50, p. 237, n. 137. As the Department has done in each of the intervening years, the productivity offset is reset each year to 4.1 percent, but there is no provision for the PRI be reset to the level it would have attained but for earlier service quality penalties.

Contrary to the Company's complaints (See Bell Atlantic Brief p. 11), this is not unfair, unreasonable or illogical. Rather it is completely consistent with the operation of a "price cap" approach to rate regulation, which establishes rate levels based upon changes from their actual levels, not what the levels "could," "should" or "would" have been. Moreover, the Department's Plan does not violate any notion of proportionality. Indeed, the Company's attempts on brief to provide some "quantitative" support for its position prove too much. The Department designed the service quality provisions of its plan to provide the Company with meaningful financial incentives to achieve acceptable levels of performance. The complained of "impact" on its monopoly service revenues as a result of the substantial service quality failings in 1994 and 1995 -- \$75 million out of \$8.5 billion of revenue over a five year period, or well under one percent -- is far from excessive and certainly could not be called "confiscatory." Cf. G.L. c. 164, §1E(c) (authorizing the imposition of service quality penalties in amounts up to and including two percent of revenues). As a substitute for the financial incentives regarding service quality that exist in competitive markets - where two years' failures can spell bankruptcy when consumers avail themselves of higher quality alternatives - a plan that provides for modest but lasting consequences cannot be called unfair, unreasonable, or illogical.

2. The Proposed Touch-Tone Residential Charge Should Be Rejected.

On brief, Bell Atlantic makes no attempt to address the Hearing Officer's clear delineation of the issue at hand -

[t]he question in dispute is whether these rates, which are presumed just and reasonable under the Price Cap Plan, are inappropriate pursuant to some other law that controls here...

- other than to claim that the rate proposal is within the pricing discretion of the Price Cap Plan (Bell Atlantic Brief at 15). The Company provided no basis to support a conclusion that its patently discriminatory Touch-tone rate proposal does not run

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afoul of the prohibition against unduly discriminatory and preferential rates set forth in G.L. c. 159, § 14. In these circumstances, the Attorney General submits that the Department should reject the Company's proposal as unduly discriminatory and unreasonably preferential on its face.

Contrary to the Company's suggestions, the Attorney General is not recommending that Bell Atlantic be required to "price residence and business services at the same rate level." No claim has been made that "state law requires that BA-MA price its service offerings identically across all classes of service" (Bell Atlantic Brief at 15). The Company has proposed to eliminate any Touch-tone service charge for business customers while maintaining a 49¢ monthly charge for residential consumers. The Attorney General submits this proposal simply goes too far. The Company itself concedes that it does incur costs to provide Touch-tone service (albeit only 4.5¢ per month, or less than one-tenth its monthly charge (Bell Atlantic Brief at p. 17, n. 11)). Bell Atlantic has offered no evidence to support its proposal to discriminate against residential customers.

The question here, then, is whether evidence of compliance with the Department's "pricing" rules alone is sufficient to establish satisfaction of the mandate against discriminatory rates in the circumstance of a proposal to collect a charge from one class of customers for a service that is provided without any charge to another class of customers. Absent an affirmative answer to that question, the Attorney General submits that the Company's proposal should be rejected. No evidence has been offered to demonstrate that this patently discriminatory proposal is rational, much less defensible on any cost, value of service, or other policy grounds. Moreover, it is clear that the Company can claim no support from the fact that it had earlier eliminated the charge for Touch-tone service provided to PBX customers (id.). The Department's long-standing practice has been to accord little or no precedential weight to its prior acceptance of proposals that were not the subject of any challenge. In any event, Bell Atlantic has certainly not established that the cost and other considerations related to the provision of Touch-tone service to PBX customers pertain to other business customers.

3. Conclusion.

For all of the foregoing reasons, the Attorney General urges the Department to strike Bell Atlantic's proposed reduction of the productivity offset from 4.1 percent to 2.94 percent as being outside the scope of the Price Cap Plan. Additionally, the Department should reject Bell

Atlantic's charges for Touch-tone service because the record cannot support any conclusion except that this classification of customers is unjustly discriminatory and/or unduly preferential under M.G.L. c. 159 § 14.

Sincerely,

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Service List for D.T.E. 99-102
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

New England Telephone and Telegraph Company)
d/b/a Bell Atlantic's Fifth Annual Price Cap) D.T.E. 99-102
Compliance Filing)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding by e-mail and either hand delivery, mail, or fax.

Dated at Boston this 20th day of March 2000.

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